

46 Am. Jur. 2d Judges § 182

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Judges

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IX. Disqualification to Act in Particular Case

C. Remedies and Procedure

3. Motion for Disqualification and Affidavit

b. Affidavit of Prejudice

§ 182. Timeliness of affidavit of prejudice filed with motion to recuse judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(3)

Whether an affidavit of prejudice was timely depends on all of the circumstances.¹ An affidavit of disqualification of a judge must be filed as soon as possible after the incident giving rise to a claim of bias and prejudice occurred; failure to do so may result in waiver of the objection, especially when the facts underlying the objection have been known to the party for some time.² Generally, the failure to file a timely affidavit of prejudice may be excused only upon a showing of good cause.³ Disqualification may be allowed despite an untimely request where an affidavit in proper form is filed subsequent to a timely affidavit having been filed, but rejected for formal defects, and the second affidavit is not filed so late that the circumstances indicate bad faith.⁴

A judge waives the right to refuse to consider an affidavit of disqualification on the basis of its untimely filing where the judge fails to follow proper procedure.⁵

If new grounds for disqualification are discovered after the time limit has passed for filing a statutory affidavit of prejudice, then a party may file a motion to disqualify based on the state code of judicial conduct as soon as possible after becoming aware of the new information.⁶

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Footnotes

¹ [State v. Funk](#), 170 Wash. 560, 17 P.2d 11 (1932).

2 In re Disqualification of Burge, 142 Ohio St. 3d 57, 2014-Ohio-5871, 28 N.E.3d 48 (2014).
3 U.S. v. Bennett, 539 F.2d 45 (10th Cir. 1976); Roussel v. Tidelands Capital Corp., 438 F. Supp. 684, 25 Fed.
R. Serv. 2d 375 (N.D. Ala. 1977).
4 State v. Creighton, 330 Mo. 1176, 52 S.W.2d 556 (1932).
As to timeliness of objection, see §§ 168 to 174.
As to waiver and estoppel, see §§ 198 to 208.
As to whether withdrawal of an affidavit constitutes waiver, see § 204.
5 Sabin v. Bureau of Motor Vehicles, 26 Ohio Misc. 2d 8, 498 N.E.2d 511 (C.P. 1986).
6 Towbin Dodge, LLC v. Eighth Judicial Dist. Court of State ex rel. County of Clark, 121 Nev. 251, 112 P.3d
1063 (2005).

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